

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

ROBERTO CRUZ,)	
)	
Petitioner,)	
)	
v.)	2:05-CV-01917-JFG-JEO
)	
STATE OF ALABAMA, ATTORNEY)	
TEMO LOPEZ, ATTORNEY DAVID)	
BOYCE SIMPSON, JUDGE GLORIA)	
BAHAKEL, PROSECUTOR DAVID)	
M. BARBER, and SHERIFF MIKE)	
HALE,)	
)	
Respondents.)	

MEMORANDUM OPINION

Roberto Cruz has filed a petition for a writ of habeas corpus challenging his marijuana trafficking conviction that was returned by a Jefferson County Circuit Court jury on August 10, 2005. *See* 28 U.S.C. § 2254. He alleges that he was denied effective assistance of counsel due to the fact that counsel did not perform as directed by the petitioner. The petitioner was to be sentenced by the trial court judge on October 14, 2005.

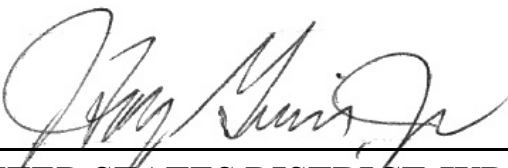
Under § 2254 a petition for relief may not be granted unless the petitioner has exhausted his state remedies. 28 U.S.C. § 2254(b)(1). A court is further precluded from finding that he has exhausted his state remedies “if he has the right under the law of the State to raise, by any available procedure, the question presented.” 28 U.S.C. § 2254(c).

In the present case, the petitioner has various state alternatives for relief. To the extent he seeks to challenge his conviction and any sentence imposed, he may file a direct appeal with the Alabama Court of Criminal Appeals. ALA. R. APP. P. 4(b). Thereafter, he may be able to file a

petition for a writ of certiorari with the Alabama Supreme Court. ALA. R. APP. P. 39. To the extent he fails to obtain relief on appeal, he may file a post-conviction petition challenging the effectiveness of his trial counsel. ALA. R. CRIM. P. 32. Thereafter, if he does not receive the relief requested, he may file an appeal of that denial to the Alabama Court of Criminal Appeals. Finally, he would be able to file a petition for a writ of certiorari with the Alabama Supreme Court if he is unsuccessful in the Alabama Court of Criminal Appeals.

In view of the foregoing, the present action is premature and due to be dismissed without prejudice to the petitioner's right to pursue his available state remedies and then to petition this court for a writ of habeas corpus, if necessary. An appropriate order dismissing this action will be entered.

DONE and ORDERED 24 October 2005.



**UNITED STATES DISTRICT JUDGE
J. FOY GUIN, JR.**